IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3067 of 2001

to

FIRST APPEALNo 3088 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

RANCHHODBHAI KHUSHALBHAI

Appearance:

Ms. Harsha Devani, ASSTT. GOVERNMENT PLEADER
for appellant Nos. 1-2
MR GC MAZMUDAR for appellant No. 2
MR HG MAZMUDAR for appellant No. 2
MR MD VAKIL for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 20/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

All these appeals are being disposed of by this common judgment as they are arising out of the impugned common judgment and award dated 20th January, 2001 passed by the learned Civil Judge (S.D.), Surendranagar delivered in L.A.R. Nos. 306 to 327 of 1997.

2. 22 Reference cases namely L.A.R. Nos. 306 to 327 of 1997 were made by the Special Land Acquisition Officer, Narmada Yojna, Unit-11, Ahmedabad for Narmada Yojna Canal at village Lakhtar of Dist: Surendranagar under section 18 of the Land Acquisition Act (for short "the Act"), wherein th claimants prayed for adequate compensation for the lands which were acquired by the State for the public purpose of Narmada canal.

3. Notification under section 4 of the Act was published in the year 1992 followed by the notification under section 6 in the year 1993. The lands admeasuring from 20 sq.mtrs. to 44884 sq.mtrs. of 22 land owners were acquired by the aforesaid notification. An award came to be passed on23rd November, 1995 by the Land Acquisition Officer whereby the Land Acquisition Officer awarded meagre amount of Rs.2/- per sq.mtr. only. Therefore, the aforesaid References were made before the learned Civil Judge (S.D.), Surendranagar.

4. Written statement at exh. 9 was filed by the opponents. By an order passed below exh. 10 (LAR no.322 of 1997) it was decided to hear all the reference cases togetehr and to dispose of the same by the common judgment by recording evidence in only one case i.e. LAR no.322 of 1997. On behalf of the claimants, following witnesses have been examined.

01. Muljibhai Harjibhai exh.13.
02. P.B.Rana exh. 38.
03. Manilal Virjibhai exh.43.
04. Ishwarbhai Zaverbhai exh.44.
05. Shaileshbhai Baldevbhai exh. 47.
06. Ramesh Shivlal exh. 49.
08. Arvind Harilal exh. 55.
09. Omprakash D.Pandya exh. 60.

5. Initially, the claimants claimed Rs.50/per sq.mtr, but lateron they enhanced the claim to Rs.100/- per sq.mtr. during the pendency of the case before the learned Judge.

6. On behalf of the opponents, Shri R.V.Chavda, Engineer of Narmada Yojja was examined. He produced sale deed at exhs. 73 to 78.

7. Having perused the oral evidence as well as documentary evidence led by the parties, the learned Judge came to the conclusion that an amount of Rs.2/- per sq.mtr. awrded by the L.A.O. for the lands of the land owners was too meagre and on the basis of tye yield system, in absence of any concrete material regarding sale instances, they would be entitled for at least Rs.20/- per sq.mtr. Therefore, he allowed all the Reference cases partly and awarded Rs.20/- per sq.mtr. in all, instead of Rs.100/- per sq.mtr. claimed by the claimants by his common judgment and award dated 20th January, 2001. The learned Judge also held that the claimants were entitled to recover solatium at the rate of 30% per annum on the amount of additional compensation from the opponents and they were required to pay interest at the rate of 9% per annum to the claimants from the date of taking over possession of the lands and thereafter at the rate of 15% per annum till realisation of the amount awarded by way of compensation. The learned Judge also held that the claimants were entitled to recover 12% increase in addition to the market value of the lands from the date of the publication of the notification under section 4(1) o the Act in respect of the said lands to the date of the award or the date of taking over possession of the land whichever is earlier as provided under section 23(IA) of the Act.

6. Though the acquiring body i.e. Executive Engineer, Saurashtra Narmada Canal Division, and the Special Land Acquisition Officer were different, surprisingly, they have jointly filed all these appeals in their individual capacity. It may be stated that the award has to be ultimately satisfied by the State of Gujarat and if the award is not challenged by the State,then the said award would become final. In our considered opinion, the present appellant no.1 Special Land Acquisiton Officer and appellant no. 2 Executive Engineer, Saurashtra Narmada Canal Division could not have filed all these appeals in their individual capacity. Be that as it may. On merits also, we do not find any substance in all these appeals. Therefore, we

have not dismissed all these appeals on this ground alone.

7. Ms. Devani, the learned Assistant Government Pleader appearing for the appellant no.1 Special Land Acquisition Officer has taken us through the entire impugned judgment and award passed by the learned Judge and the reasons assigned in it and submitted that the learned Judge has committed grave error in discarding the sale instances produced at exhs. 73 to 78 of nearby lands which were almost of similar period of 1989 to 1993 where the lands were sold by private owners around Rs.2/per sq.mtr. She therefore, submitted that the L.A.O. has rightly awarded Rs.2/- per sq.mtr. for the lands which were acquired in the year 1992. She further submitted that when sale instances were very much available for the correct adjudication of the price of the land, then it was not open for the learned Judge to take into consideration the yield basis for determining the price of the land.

8. In our considered opinion, Ms. Devani is very much right in submitting that ordinarily when there are sale instances, then they should have been relied upon. But on facts of these cases, we are not inclined to interfere with the impugned award passed by the learned Judge for the reason that there was a sale instance at exh.15 whereby the Telephone Department of the Central Government purchased the nearby land at the rate of Rs.150/- per sq.mtr. in January, 2000. That means, after more than 7 years of the acquisition of the lands in question in the instant case. It is true that the lands were sold between 1989 to 1992 at the rate of Rs.2/- per sq.mtr., but that was a private transaction entered into between private parties and in the instant case, neither seller nor purchaseer has come forward to depost in favour of the authority. As against that, there is a sale transaction at exh.15 which shows that in the year 2000, the land was sold at Rs.150/- per sq.mtr.

9. In the case of Deputy General Manager,ONGC vs. Chaturji Lalaji and others reported in 1998(1) GLR, 130, the Division Bench of this Court has held that appreciation in the value of land at the rate of 10% per annum to be accepted. Thus, there is a binding decision of this Court on this point. If we consider exh.1 5, sale instance of nearby land, which was sold at the rate of Rs.150/- in January, 2000, then it cannot be said that the amount of Rs.20/- per sq.mtr. awarded by the learned Judge was in any way wrong. If we go downward in calculation of 10%, then it would be little more than

Rs.20/-. However, according to us, Rs.20/- per sq.mtr. award is reasonable, therefore, we would not like to interfere with such finding recorded by the learned Judge.

10. Above this, there is an authentic oral evidence led on behalf of the claimant side and as per the oral evidence of Muljibhai Harjibhai at exh. 13, the lands which were acquired were fertile and there was a facility of irrigation from check dams and they used to take two crops in a season, one in monsoon and another in winter. From the sale of crops like cotton, Jeera, Bajra, wheat etc. they used to earn Rs.12000/- to Rs.14000/- per year as net profit, which would come to about Rs.22000/- to Rs.24000/- in a year. This evidence of the claimant given on oath has not at all been shaken in his cross-examination and the way in which the claimant has deposed, we are not prepared to discard his evidence which was rightly relied upon by the learned Judge. It may be stated that the learned Judge has taken into consideration the early income at the rate of Rs. 14000/- per year only and by deducting 50% agricultural costs, he had come to the conclusion that they would be entitled to at least Rs. 20/- per sq.mtr. and not Rs.2/per sq.mtr. which is awarded by the L.A.O. Thus, he awarded additional sum of Rs.18/- per sq.mtr. to the claimants.

11. In view of the above discussion, we do not find any substance or merit in all these appeals and accordingly all these appeals are hereby dismsised with costs.

12. In the instant case, the respondents claimants have not filed cross objections, but in view of the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in the case of Sunder vs. Union of India reported in 2001(7) SCC 211, the respondents claimants would be entitled to get the interest on the amount awarded under sections 23(2) and 23(1)(A) of the Land Acquisition Act and they are also entitled to get 12% interest towards difference on the amount so awarded under sections 23(2) and 23(1)(A) of the Land Acquisition Act. Accordingly, while dismissing all these appeals, the appellants are directed to pay the same to the respondent claimants at the earliest and not later than 3 months from the date of receipt of the certified copy of the judgment and Award.

13. Award be drawn accordingly.

14. Learned advocate Mr. Vakil appearing for the respondents-original claimants inall these appeals, has sought permission before effetive hearing to withdraw the cross-appeal nos. 36 to 57 of 2001. Accordingly, they are dismissed as withdrawn before effective hearing.

(B.J.Shethna,J)

(Kundan Singh,J)

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